

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/539,220 Issued as Patent No: 7,528,121	First Named Inventor: Heron <i>et al.</i>
Filing Date: June 17, 2005 Issue Date: May 5, 2009	Attorney Docket No.: 100938-1P US
Examiner: Tamthom Ngo Truong	Group Art Unit: 1624
Customer No.: 44992	Confirmation No.: 4585
Title: Phosphonooxy Quinazoline Derivatives and their Pharmaceutical Use	

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION TO REQUEST FOR RECONSIDERATION OF THE PATENT TERM
ADJUSTMENT INDICATED IN THE NOTICE OF ALLOWANCE UNDER 35 USC
154(b) AND 37 CFR 1.705**

Sir:

Applicants hereby request that the Patent Term Adjustment (PTA) for the above-identified patent be reconsidered. Applicants believe that the PTA of 620 days for the above application is incorrect and that the PTA to which Applicants are entitled is 942 days. This request is being submitted within two months of the issue date of the patent (*i.e.*, May 5, 2009), and is therefore timely.

A petition fee under 37 CFR Section 1.18(e) was included with Applicants prior submission on February 12, 2009, and acknowledged by the Office in the Decision rendered on March 16, 2009 (a copy of which is enclosed herewith). This patent is not subject to a terminal disclaimer.

PATENT TERM ADJUSTMENT (PTA) CALCULATIONS

A review of the Patent Term Adjustment History in the PAIR system shows that the United States Patent and Trademark Office (PTO) calculated the PTA (copy attached herein as page 4 and incorporated by reference) as follows:

1) The PTO mailed a delayed first action on 28 April, 2008, thereby according a PTO Delay of 620 days 35 USC 154(b)(1)(A). Applicants do not dispute this calculation.

THE PTO HAS FAILED TO AFFORD PTA UNDER 35 USC 154(b)(1)(B) FOR PTO DELAY

2) The actual filing date of the Application is June 17, 2005. Under 154 (b)(1)(B)

[I]f the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the **actual filing date of the application** in the United States, not including— (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);. . . the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. (emphasis added)

June 17, 2008 is three years from the actual filing date. The patent issued on the May 5, 2009, and therefore an additional 322 days of PTA are due for PTO Delay, i.e., 942 (620 plus 322) additional delay days are due to the Applicants under 154(b)(1)(B).

3) In anticipation that the Director may argue that any of the times provided herein overlap under 35 USC 154 (b)(1)(A) and 154(b)(1)(B), the Director is pointed to the United States District Court For The District of Columbia decision in WYETH v. DUDAS Civil Action No. 07-1492 (2008) regarding the interpretation of overlapping time. The court determined that periods of delay “overlap” only if the delays “occur on the same day.”

Conclusion

The Applicant requests a total of 942 days of PTA:

620 days under 35 USC 154(b)(1)(A) (see point 1) and

plus 322 days under 35 USC154 (b)(1)(B), (see points 2 and 3).


The Commissioner is hereby authorized to charge any deficiency in the fees or credit any overpayment to deposit account No. 50-3231, referencing Attorney Docket No. 100938-1P US.

Respectfully submitted,

/Jacob G. Weintraub/









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Patent Term Adjustment

Filing or 371(c) Date:	06-17-2005	USPTO Delay (PTO) Delay (days):	620
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	0
Post-Issue Petitions (days):	+0	Total Patent Term Adjustment (days):	620
USPTO Adjustment (days):	+0	Explanation Of Calculations 	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
04-15-2009	PTA 36 Months		
05-05-2009	Patent Issue Date Used in PTA Calculation		
03-20-2009	Dispatch to FDC		
03-16-2009	Mail-Petition Decision - Dismissed		
03-16-2009	Petition Decision - Dismissed		
02-12-2009	Rule 47 / 48 Correction of Inventorship Papers Filed		
02-19-2009	Application Is Considered Ready for Issue		
02-12-2009	Petition Entered		
02-12-2009	Issue Fee Payment Verified		
02-12-2009	Issue Fee Payment Received		
11-13-2008	Mail Notice of Allowance		
11-10-2008	Document Verification		
11-10-2008	Examiner's Amendment Communication		
11-10-2008	Notice of Allowance Data Verification Completed		
11-10-2008	Case Docketed to Examiner in GAU		
09-10-2008	Date Forwarded to Examiner		
07-28-2008	Response after Non-Final Action		
04-28-2008	Mail Non-Final Rejection	620	
04-26-2008	Non-Final Rejection		
10-04-2005	Information Disclosure Statement considered		
02-15-2008	Information Disclosure Statement considered		
02-15-2008	Information Disclosure Statement (IDS) Filed		
02-17-2006	Cleared by OIPE CSR		
02-17-2006	Cleared by OIPE CSR		
02-09-2006	IFW TSS Processing by Tech Center Complete		
02-09-2006	Case Docketed to Examiner in GAU		

10-04-2005	Information Disclosure Statement (IDS) Filed		
10-04-2005	Information Disclosure Statement (IDS) Filed		
06-17-2005	Request for Foreign Priority (Priority Papers May Be Included)		
06-17-2005	Request for Foreign Priority (Priority Papers May Be Included)		
06-17-2005	Preliminary Amendment		
06-24-2005	371 Completion Date		
02-07-2006	Application Dispatched from OIPE		
02-07-2006	Notice of DO/EO Acceptance Mailed		
06-17-2005	Initial Exam Team nn	